

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to the acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States.

(d) In accordance with Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364)—

(1) When obtaining carriage requiring a covered vessel, the contracting officer must consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam; and

(2) DoD must submit an annual report to the congressional defense committees, addressing the information provided by offerors with regard to overhaul, repair, and maintenance for covered vessels performed in the United States or Guam.

(e) In accordance with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), DoD may not award, renew or extend, or exercise an option under a charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C., unless the contract contains the clause at 252.247–7027.

[65 FR 50146, Aug. 17, 2000, as amended at 70 FR 35545, June 21, 2005. Redesignated and amended at 72 FR 49206, Aug. 28, 2007; 73 FR 70911, Nov. 24, 2008; 75 FR 65438, Oct. 25, 2010; 78 FR 37990, June 25, 2013]

247.573 Procedures.

[72 FR 49206, Aug. 28, 2007]

247.573–1 Ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies when ocean transportation is not the principal purpose of the contract, and the cargo to be transported is owned by DoD or is clearly identifiable for eventual use by DoD.

(b) DD Form 1653, Transportation Data for Solicitations, shall be used—

(1) By the requesting activity in developing the Government estimate for transportation costs; and

(2) By the contracting officer in ensuring that valid shipping instructions and delivery terms are included in solicitations and contracts that may involve transportation of supplies by sea.

(c) If the contractor notifies the contracting officer that the contractor or a subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer must request confirmation of the nonavailability from—

(i) The Commander, Military Sealift Command (MSC), through the Contracts and Business Management Directorate, MSC; or

(ii) The Commander, Military Surface Deployment and Distribution (SDDC), through the SDDC global e-mailbox *sddc.ops.ffw@us.army.mil* and the Principal Assistant Responsible for Contracting, SDDC.

(2) The proposed freight charges to the Government, the contractor, or any subcontractor are higher than charges for transportation of like goods to private persons, the contracting officer may approve a request for an exception to the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting an exception, the contracting officer must request advice, oral or written, from the Commander, MSC, or the Commander, MTMC.

(ii) In advising the contracting officer whether to grant the exception, the Commander, MSC, or the Commander, SDDC, must consider, as appropriate, evidence from—

(A) Published tariffs;

(B) Industry publications;

(C) The Maritime Administration; and

(D) Any other available sources.

(3) The freight charges proposed by U.S.-flag carriers are excessive or otherwise unreasonable—

(i) The contracting officer must prepare a report in determination and finding format, and must—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may

be available from foreign-flag carriers. Therefore, a lower price for use of a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a price differential may indicate a need for further review;

(B) Consider, accordingly, not only excessive profits to the carrier (to include vessel owner or operator), if ascertainable, but also excessive costs to the Government (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances; and

(C) Include an analysis of whether the cost is excessive, taking into account factors such as—

(1) The differential between the freight charges proposed by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(2) A comparison of U.S.-flag rates charged on comparable routes;

(3) Efficiency of operation regardless of rate differential (*e.g.*, suitability of the vessel for the required transportation in terms of cargo requirements or vessel capacity, and the commercial reasonableness of vessel positioning required); and

(4) Any other relevant economic and financial considerations.

(ii) The contracting officer must forward the report to—

(A) The Commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, through the SDDC global e-mailbox: sddc.ops.ffw@us.army.mil and the Principal Assistant Responsible for Contracting, SDDC.

(iii) If in agreement with the contracting officer, the Commander, MSC, or the Commander, SDDC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges

are excessive or otherwise unreasonable.

[65 FR 50146, Aug. 17, 2000, as amended at 67 FR 38021, May 31, 2002. Redesignated at 72 FR 49206, Aug. 28, 2007. 75 FR 51418, Aug. 20, 2010]

247.573-2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

(1) Time charters;

(2) Voyage charters;

(3) Contracts for charter vessel services;

(4) Dedicated contractor contracts for charter vessel services;

(5) Ocean bills of lading; and

(6) Subcontracts under Government contracts or agreements for ocean transportation services.

(b) Coordinate these acquisitions, as appropriate, with the U.S. Transportation Command, the DoD single manager for commercial transportation and related services, other than Service-unique or theater-assigned transportation assets, in accordance with DoD 5158.4, United States Transportation Command.

(c) All solicitations within the scope of this subsection must provide—(1) A preference for U.S.-flag vessels in accordance with the 1904 Act;

(2) An evaluation criterion for offeror participation in the Voluntary Intermodal Sealift Agreement; and

(3) An evaluation criterion considering the extent to which offerors have had overhaul, repair, and maintenance work for all covered vessels in an offeror's fleet performed in shipyards located in the United States or Guam. Work performed in foreign shipyards shall not be evaluated under this criterion if—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(d) Do not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—